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Person To Contact:

ID No.

Telephone Number:

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PLR-137716-10

Date:  
January 14, 2011

## LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

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2

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

c =

d =

e =

Dear :

This letter responds to your September 14, 2010 request, submitted by your authorized representative, for rulings on certain federal income tax consequences of the Proposed Transactions (described below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **STATEMENT OF FACTS**

Parent is the common parent of an affiliated group of corporations that join in the filing of a consolidated return (the "Parent Group"). Parent owns all of the issued and outstanding stock of Sub 1 and all of the issued and outstanding common stock of Sub 2.

Sub 2 owns all of the issued and outstanding stock of Sub 3.

Sub 3 owns all of the issued and outstanding stock of Sub 4, and approximately a percent of the issued and outstanding stock of Sub 5.

Sub 4 owns the remaining approximately b percent of the issued and outstanding stock of Sub 5, and all of the issued and outstanding preferred stock of Sub 7.

Sub 5 owns approximately c percent of the issued and outstanding stock of Sub 6, and all of the issued and outstanding common stock of Sub 7.

Sub 6 owns all of the issued and outstanding stock of Sub 15, and all of the issued and outstanding preferred stock of Sub 2.

Sub 7 owns approximately d percent of the issued and outstanding stock of Sub 6.

In addition, Parent owns, directly and indirectly, interests in various other members and entities not relevant here.

## **COMPLETED INTERCOMPANY TRANSACTIONS**

### Completed Sub 3 Transactions

Previously, Sub 2 owned all of the issued and outstanding stock of Sub 8, Sub 8 owned all of the issued and outstanding stock of Sub 11, and Sub 11 owned all of the issued and outstanding stock of Sub 3. On Date 1, Sub 11 distributed all of the stock of Sub 3 to Sub 8 in a transaction intended to qualify as a tax-free distribution under section 355 (the "First Sub 3 Transaction"). On that same date, immediately following the First Sub 3 Transaction, Sub 8 distributed all of the stock of Sub 3 to Sub 2 in a transaction intended to qualify as a tax-free distribution under section 355 (the "Second Sub 3 Transaction"). If the First Sub 3 Transaction did not qualify as a tax-free distribution, then Sub 11 would have recognized gain under section 311(b). However, pursuant to Treas. Reg. § 1.1502-13, Sub 11 would not have taken such gain into account. Notwithstanding that the First Sub 3 Transaction may have qualified as a tax-free distribution, if the Second Sub 3 Transaction did not so qualify, then Sub 8 would have recognized gain under section 311(b). However, pursuant to Treas. Reg. § 1.1502-13, Sub 8 would not have taken such gain into account. Alternatively, if the First Sub 3 Transaction did not qualify as a tax-free distribution, then Sub 8 would not have recognized any gain under section 311(b) because the Second Sub 3 Transaction occurred on the same date as the First Sub 3 Transaction.

Sub 2 formed Sub 9, and on Date 3, Sub 8 merged with and into Sub 9, with Sub 9 surviving, in a transaction that the Parent Group treated as a reorganization under section 368(a)(1)(F). On the same date, Sub 9 formed Sub 12, and Sub 9 changed its name to Sub 10 in a transaction that the Parent Group treated as a reorganization under section 368(a)(1)(F). On Date 4, Sub 11 merged with and into Sub 12, with Sub 12 surviving, in a transaction that the Parent Group treated as a reorganization under section 368(a)(1)(F). On the same date, Sub 12 changed its name to Sub 13 in a transaction that the Parent Group treated as a reorganization under section

368(a)(1)(F). On Date 5, Sub 13 merged with and into Sub 10, with Sub 10 surviving, in a transaction that the Parent Group treated as a tax-free liquidation under section 332. After the merger, on the same date, Sub 10 changed its name to Sub 14 in a transaction that the Parent Group treated as a reorganization under section 368(a)(1)(F). On Date 6, Sub 14 changed its name to Sub 15 in a transaction that the Parent Group treated as a reorganization under section 368(a)(1)(F). As a result of the transactions on Dates 3, 4, 5, and 6, the potential intercompany gain from both the First Sub 3 Transaction and the Second Sub 3 Transaction (the “Potential Intercompany Gain”) with respect to the stock of Sub 3 resides in the member that is now Sub 15.

#### Completed Sub 1 Transactions

On Date 2, Sub 3 distributed all of the stock of Sub 1 to Sub 2 (the “First Sub 1 Transaction”). As a result of the First Sub 1 Transaction, Sub 3 recognized gain under section 311(b) (the “Intercompany Gain”). However, pursuant to Treas. Reg. § 1.1502-13, Sub 3 did not take such gain into account. Also on Date 2, immediately following the First Sub 1 Transaction, Sub 2 distributed all of the stock of Sub 1 to Parent (the “Second Sub 1 Transaction”). Because the Second Sub 1 Transaction occurred on the same date as the First Sub 1 Transaction, Sub 2 did not recognize any gain under section 311(b).

### **PROPOSED TRANSACTIONS**

In order to eliminate unnecessary holding companies and rationalize its corporate structure, Parent has proposed the following transactions (the “Proposed Transactions”) that will take place in the following sequence:

- (i) Parent will merge with and into Sub 2, with Sub 2 surviving (the “Parent Downstream Merger”).
- (ii) Sub 4 will distribute its Sub 7 preferred stock to Sub 3.
- (iii) Sub 3 will adopt a formal plan of liquidation (the “Sub 3 Plan of Liquidation”).
- (iv) Pursuant to the Sub 3 Plan of Liquidation, Sub 3 will distribute its stock in Sub 4 and Sub 5 to Sub 2 (“Sub 3 Liquidating Distribution 1”).
- (v) Sub 4 will merge with and into Sub 2, with Sub 2 surviving (the “Sub 4 Liquidation”).
- (vi) Sub 5 will merge with and into Sub 2 with Sub 2 surviving (the “Sub 5 Liquidation”).

- (vii) Sub 15 will distribute approximately \$e to Sub 6.
- (viii) Sub 6 will adopt a formal plan of liquidation (the “Sub 6 Plan of Liquidation”).
- (ix) Pursuant to the Sub 6 Plan of Liquidation, Sub 6 will redeem Sub 7’s d percent interest in its stock in exchange for approximately \$e and will merge with and into Sub 2, with Sub 2 surviving (collectively, the “Sub 6 Liquidation”).
- (x) Sub 15 will merge with and into Sub 2, with Sub 2 surviving (the “Sub 15 Liquidation”).
- (xi) Pursuant to the Sub 3 Plan of Liquidation, Sub 3 will merge with and into Sub 2, with Sub 2 surviving (“Sub 3 Liquidating Distribution 2,” and together with Sub 3 Liquidating Distribution 1, the “Sub 3 Liquidation”).
- (xii) Sub 1 will convert into a limited liability company (the “Sub 1 Liquidation”).

Following the Proposed Transactions, other members of the Parent Group will be merged, liquidated, or otherwise eliminated. Sub 2 and Sub 7 will continue in existence.

## **REPRESENTATIONS**

Parent makes the following representations with respect to the Proposed Transactions:

### The Parent Downstream Merger

- (a) The Parent Downstream Merger will qualify as a reorganization described in section 368(a)(1)(A).
- (b) The Parent Group will remain in existence following the Parent Downstream Merger pursuant to Treas. Reg. § 1.1502-75(d)(2)(ii).

### The Sub 4 Liquidation

- (c) The Sub 4 Liquidation will qualify as a complete liquidation described in sections 332 and 337.

### The Sub 5 Liquidation

- (d) The Sub 5 Liquidation will qualify as a complete liquidation described in sections 332 and 337.

The Sub 6 Liquidation

- (e) The Sub 6 Liquidation will qualify as a complete liquidation described in sections 332, 336, and 337, and Treas. Reg. § 1.1502-34.

The Sub 15 Liquidation

- (f) The Sub 15 Liquidation will qualify as a complete liquidation described in sections 332 and 337.

The Sub 3 Liquidation

- (g) Sub 2, on the date of adoption of the Sub 3 Plan of Liquidation, and at all times until the Sub 3 Liquidation is completed, will be the owner of 100 percent of the single outstanding class of Sub 3 stock.
- (h) No shares of Sub 3 stock will have been redeemed during the three years preceding the adoption of the Sub 3 Plan of Liquidation.
- (i) All distributions from Sub 3 to Sub 2 pursuant to the Sub 3 Plan of Liquidation will be made within a single taxable year of Sub 3.
- (j) As soon as the Sub 3 Liquidating Distribution 1 has been made, Sub 3 will cease to be a going concern and its activities will be limited to winding up its affairs, paying debts, and distributing its remaining assets to Sub 2.
- (k) Sub 3 will retain no assets following the Sub 3 Liquidating Distribution 2.
- (l) Except as described herein, Sub 3 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the Sub 3 Plan of Liquidation.
- (m) Except as described herein, no assets of Sub 3 have been, or will be, disposed of by either Sub 3 or Sub 2 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the date of adoption of the Sub 3 Plan of Liquidation.
- (n) Except as described herein, the Sub 3 Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 3, if (i) the recipient corporation is the alter ego of Sub 3 and (ii) persons holding, directly or indirectly, more than 20 percent in value of the Sub 3 stock also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be

determined by application of the constructive ownership rule of section 318(a) of the Code as modified by section 304(c)(3).

- (o) Prior to adoption of the Sub 3 Plan of Liquidation, no assets of Sub 3 will have been distributed in kind, transferred, or sold to Sub 2, except for (i) transactions occurring in the ordinary course of business and (ii) transactions occurring more than three years prior to the date of adoption of the Sub 3 Plan of Liquidation.
- (p) Sub 3 will report all earned income represented by assets that will be distributed to Sub 2, such as receivables being reported on a cash basis, unfinished development contracts, commissions, dues, etc.
- (q) The fair market value of the assets of Sub 3 will exceed its liabilities both at the date of adoption of the Sub 3 Plan of Liquidation and immediately prior to the time the Sub 3 Liquidating Distribution 1 is made.
- (r) There is no intercorporate debt existing between Sub 2 and Sub 3 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the Sub 3 Plan of Liquidation.
- (s) Sub 2 is not an organization that is exempt from federal income tax under section 501 or any other provision of the Code.
- (t) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Sub 3 Liquidation have been fully disclosed.

#### The Completed Sub 3 Transactions

- (u) The merger of Sub 8 into Sub 9 qualified as a reorganization described in section 368(a)(1)(F).
- (v) The renaming of Sub 9 to Sub 10 qualified as a reorganization described in section 368(a)(1)(F).
- (w) The merger of Sub 11 into Sub 12 qualified as a reorganization described in section 368(a)(1)(F).
- (x) The renaming of Sub 12 to Sub 13 qualified as a reorganization described in section 368(a)(1)(F).



- (y) The merger of Sub 13 into Sub 10 qualified as a complete liquidation described in sections 332 and 337.
- (z) The renaming of Sub 10 to Sub 14 qualified as a reorganization described in section 368(a)(1)(F).
- (aa) The renaming of Sub 14 to Sub 15 qualified as a reorganization described in section 368(a)(1)(F).
- (bb) Each share of Sub 3 stock that reflects the Potential Intercompany Gain from either of the Completed Sub 3 Transactions has been held by members of the Parent Group continuously since such gain arose and will be held by members of the Parent Group continuously until completion of the Proposed Transactions.
- (cc) Immediately before the Potential Intercompany Gain with respect to the shares of Sub 3 stock would be taken into account pursuant to the Proposed Transactions, Sub 2 will be treated for federal income tax purposes as the owner of the Sub 3 stock.
- (dd) As a result of the Sub 3 Liquidation, Sub 2's basis in the shares of Sub 3 stock that reflect the Potential Intercompany Gain will be eliminated without the recognition of gain or loss (and such eliminated basis will not be reflected in the basis of any successor asset).
- (ee) The Parent Group has not and will not derive any federal income tax benefit (within the meaning of Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C)(1)(iv)) from the transactions that gave rise to the Potential Intercompany Gain or the redetermination of Potential Intercompany Gain with respect to the shares of Sub 3 (including any adjustment to basis in member stock under Treas. Reg. § 1.1502-32). For purposes of this representation, Parent has taken into consideration any potential benefits associated with successor assets to the Potential Intercompany Gain.
- (ff) The effects of the Completed Sub 3 Transactions have not previously been reflected, and would not have been reflected, directly or indirectly, on Parent's consolidated return within the meaning of Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C)(1)(v).

#### The Sub 1 Liquidation

- (gg) The Sub 1 Liquidation will qualify as a complete liquidation described in sections 332 and 337.

The Completed Sub 1 Transactions

- (hh) Each share of the stock of Sub 1 that reflects Intercompany Gain from the Completed Sub 1 Transactions has been held by members of the Parent Group continuously since such gain arose and will be held by members of the Parent Group continuously until completion of the Proposed Transactions.
- (ii) Immediately before the Intercompany Gain with respect to the shares of stock of Sub 1 is taken into account pursuant to the Proposed Transactions, Sub 2 will be treated for federal income tax purposes as the owner of Sub 1's stock.
- (jj) As a result of the Sub 1 Liquidation, Sub 2's basis in the shares of Sub 1 stock that reflect the Intercompany Gain will be eliminated without the recognition of gain or loss (and such eliminated basis will not be reflected in the basis of any successor asset).
- (kk) The Parent Group has not and will not derive any federal income tax benefit (within the meaning of Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C)(1)(iv)) from the transactions that gave rise to the Intercompany Gain or the redetermination of the Intercompany Gain with respect to the shares of stock of Sub 1 (including any adjustment to basis in member stock under Treas. Reg. § 1.1502-32). For purposes of this representation, Parent has taken into consideration any potential benefits associated with successor assets to the Intercompany Gain.
- (ll) The effects of the Completed Sub 1 Transactions with respect to the shares of stock of Sub 1 have not previously been reflected, directly or indirectly, on the Parent Group's consolidated return within the meaning of Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C)(1)(v).

**RULINGS**

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Proposed Transactions:

The Parent Downstream Merger

- (1) Following the Parent Downstream Merger, Sub 2 will be the common parent of the Parent Group for purposes of subsequently applying Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C).

The Sub 15 Liquidation

- (2) As a result of the Sub 15 Liquidation, Sub 2 will become a successor person to Sub 15 and will succeed to Sub 15's intercompany items (including the Potential Intercompany Gain with respect to the stock of Sub 3). Treas. Reg. § 1.1502-13(j)(2).

The Sub 3 Liquidation

- (3) The Sub 3 Liquidation will qualify as a complete liquidation under section 332.
- (4) Sub 2 will recognize no gain or loss upon its receipt of Sub 3's assets in the Sub 3 Liquidation. Section 332(a).
- (5) Sub 3 will recognize no gain or loss upon its distribution of its assets to Sub 2 in the Sub 3 Liquidation. Section 337(a).
- (6) Sub 2's basis in each asset received from Sub 3 in the Sub 3 Liquidation will be the same as the basis of the asset in the hands of Sub 3 immediately prior to the Sub 3 Liquidation. Section 334(b)(1).
- (7) Sub 2's holding period in each asset received from Sub 3 in the Sub 3 Liquidation will include the period during which the asset was held by Sub 3. Section 1223(2).
- (8) Sub 2 will succeed to and take into account as of the close of the effective date of the Sub 3 Liquidation the items of Sub 3 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, 384, and 1502, and the regulations thereunder. Section 381(a)(1) and Treas. Reg. § 1.381(a)-1.
- (9) Sub 2 (as a successor to Sub 15 under Treas. Reg. § 1.1502-13(j)(2)) will take into account the Potential Intercompany Gain with respect to the shares of stock of Sub 3 upon the Sub 3 Liquidation, and such Potential Intercompany Gain will be redetermined to be excluded from Sub 2's gross income. Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C).
- (10) Sub 2's earnings and profits will not be adjusted by the amount of Potential Intercompany Gain with respect to the stock of Sub 3 that is redetermined to be excluded under Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C).
- (11) As a result of the Sub 3 Liquidation, Sub 2 will become a successor person to Sub 3 and will succeed to Sub 3's intercompany items (including the

Intercompany Gain with respect to the stock of Sub 1). Treas. Reg. § 1.1502-13(j)(2).

#### The Sub 1 Liquidation

- (12) Sub 2 (as a successor to Sub 3 under Treas. Reg. § 1.1502-13(j)(2)) will take into account the Intercompany Gain with respect to the stock of Sub 1 upon the Sub 1 Liquidation, and such Intercompany Gain will be redetermined to be excluded from Sub 2's gross income. Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C).
- (13) Sub 2's earnings and profits will not be adjusted by the amount of Intercompany Gain with respect to the stock of Sub 1 that is redetermined to be excluded under Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C).

#### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects from, the Proposed Transactions that are not specifically covered by the above rulings.

#### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Frances L. Kelly  
Senior Counsel, Branch 2  
Office of Associate Chief Counsel (Corporate)